

JOSEPH & KIRSCHENBAUM LLP

Attorneys at Law

Charles Joseph
Maimon Kirschenbaum
Denise Schulman
Josef Nussbaum
Lucas C. Buzzard
Leah Seliger
Michael DiGiulio

32 Broadway, Suite 601 D.
New York, NY 10004
Phone (212) 688-5640
Fax (212) 688-2548
www.jk-llp.com

July 22, 2022

VIA ECF

Magistrate Judge Lee G. Dunst
United States District Court
Eastern District of New York
814 Federal Plaza
Central Islip, New York 11722

Re: *Roldan v. K&T Provisions, Inc., et ano.* – Case No. 2:21-cv-04604 – Joint Status Report

Dear Judge Lindsay:

I represent the Plaintiff, Salvador Roldan, in the above captioned matter and write jointly with Defendants to submit this status report pursuant to this Court's June 24, 2022 Order.

Summary of Claims and Defenses

In this action, Plaintiff alleges that he is a former employee of Defendants and that he worked in Defendants' butcher shop from approximately January 2017 through May 2021. Plaintiff alleges that throughout his employment with Defendants, Plaintiff worked between five and six days per week. When Plaintiff worked five days during a week, he was paid a flat weekly rate. During busy weeks, Plaintiff would work an additional day, whereby he was paid an additional flat daily rate. At different times during his employment, Plaintiff alleges that he worked between 50 hours and 64 hours per week.

Plaintiff alleges that at times during his employment, because Defendants paid him a flat rate, Plaintiff's hourly rate dipped below the minimum wage. In addition, Plaintiff alleges that Defendants did not pay Plaintiff at one-and-one-half times his regular hourly rate for work in excess of forty (40) hours per workweek. Further, Plaintiff alleges that he was not paid the spread of hours premium for days in which he worked over 10 hours per day, and that Defendants failed to provide him with legally sufficient wage statements or wage notices.

As such, Plaintiff brings claims under the Fair Labor Standards Act ("FLSA") and under the New York Labor Law ("NYLL"). Specifically, Plaintiff brings overtime claims under the FLSA and NYLL and minimum wage, spread of hours, and wage notice and statement claims under the NYLL.

Defendants contend that plaintiff was employed as a butcher at K&T Meats for approximately four and a half years. He was an undocumented worker. He was paid his wages in cash and signed weekly time sheets that acknowledged receipt of the wages and tips he received.

Defendants further contend that at all times plaintiff received at least the then legal minimum wage and his required Notices of Pay. The Notices of Pay identified his base rates of pay and overtime rates. Plaintiff earned an average of approximately \$700.00 per week, in cash, plus tips, inclusive of overtime. He worked an average of 45 hours per week with 5 hours per week being paid at the overtime rates, but never worked more than 10 hours per day. Defendants' position is that at all times they paid plaintiff the correct amount of wages and overtime. The original weekly time sheets and Notices of Pay signed by plaintiff have been produced to plaintiff in this action.

Status of Discovery

Plaintiff filed this action on August 16, 2021. (Dkt. No. 1). Defendants answered on October 14, 2021. (Dkt. No. 7). On October 26, 2021, Magistrate Judge Lindsay ordered the parties to proceed under the FLSA discovery protocols and referred the case to mediation. (Dkt. No. 9). Pursuant to the protocols, the parties exchanged documents, met regarding settlement, and on April 6, 2022 attended a mediation. The mediation failed, and, thereafter, Judge Lindsay issued a discovery schedule. (Dkt. No. 12).

The parties have served requests for the production of documents and interrogatories. The parties have responded to these discovery requests and produced documents. On July 20, 2022, Plaintiff raised issues with Defendants' responses and production. Defendants have responded to those issues and have also raised issues with plaintiff's document production. The parties will meet and confer to determine whether the issues can be resolved without judicial intervention. The parties are in the process of setting up deposition dates for August and September.

History of Settlement Discussions

The parties discussed settlement prior to the filing of the action. Plaintiff made an initial demand. Defendants have not made any offers. On April 6, 2022, the parties attended a court ordered mediation. The case did not settle.

We thank the Court for its attention to this matter.

Respectfully Submitted,

/s/ Michael DiGiulio

Michael DiGiulio
32 Broadway, Suite 601
New York, NY 10004
Tel: 212-688-5640
Fax: 212-688-2548

Attorney for Plaintiff